

BEFORE THE HEARINGS PANEL

**IN THE MATTER of Hearings on submissions
concerning the Proposed One Plan
notified by the Manawatu-Wanganui
Regional Council**

**Supplementary Recommendations
of Clare Barton
for the General Hearing
relating to
Air (Chapter 8); and
Discharges to Air (Chapter 14).**

INTRODUCTION

1. This report covers further recommendations made after evaluation of evidence received in response to the Planning Evidence and Recommendations Report on the Air (Chapter 8) and Discharges to Air (Chapter 14) chapters of the Proposed One Plan (POP) (2009/EXT/1010).
2. This report also includes recommendations (omitted from the Planning Evidence and Recommendations Report) on some submissions.

BACKGROUND

3. The Hearings Panel has been provided with the **Planning Evidence and Recommendations Report** (2009/EXT/1010) prepared by Clare Barton in conjunction with Natasha James. The Report summarises the submissions on these chapters and makes recommendations on whether those submissions should be accepted in whole, or in part, or not at all, and how the provisions of the POP should be changed to reflect those submissions.
4. **Pre-circulated evidence** from submitters has also been provided to the Panel.
5. **Pre-hearing meetings.** Pre-hearing meetings or discussions have been carried out with the following parties:
 - a. New Zealand Defence;
 - b. Horticulture New Zealand;
 - c. Higgins Group; and
 - d. The forestry companies comprising P F Olsen Ltd, Ernslaw One Ltd, NZ Forest Managers Ltd and Hancock Forest Management NZ Ltd.
6. Some changes to my original recommendations for Air (Chapter 8) and Discharges to Air (Chapter 14) are made and these are reflected in revised track changes ('green versions') of Chapters 8 and 14.
7. No **preliminary questions** were raised by the Hearings Panel. Any questions that arise during the course of the Hearing can be dealt with during the Hearing, or, if a more detailed response is necessary, answered at the end of the Hearing.

FURTHER RECOMMENDATIONS IN RESPONSE TO THE EVIDENCE RECEIVED

8. Pre-circulated evidence relating to the Air and Discharges to Air chapters was received from the following parties:
 - Graeme Mathieson for AgResearch and LIC (in support);
 - Rob Hart for Winstone Pulp International Ltd (in support);
 - Lisa Hooker for Airways Corporation of New Zealand;
 - Emily S Grace for NZ Defence Force;
 - David Le Marquand for Transpower NZ Ltd (in support);
 - Gemma Moleta for PIANZ and Tegel (in support);
 - Nathan Baker for Higgins Group;
 - Lisa Hooker for the Department of Corrections;
 - Lisa Hooker for the New Zealand Police; and
 - Lisa Hooker for the Ministry of Education (in support).

9. In this report I identify those matters that have been raised in expert evidence that I have considered and can now accept (either in totality or in part) the recommendations of the expert. In addition, as a result of pre-hearing meetings I consider that changes can also be recommended to a number of other provisions.
10. After reviewing the evidence and undertaking pre-hearing meetings, changes to the following recommendations of the Planning Evidence and Recommendations Report are recommended:
 - a. Air 38 pp. 170 36/14.
 - b. Air 21 pp. 80 36/15.
 - c. Air 31 pp. 132 20/4.
 - d. Air 31 pp. 132 36/12.
 - e. Air 32 pp. 146 36/13.
 - f. Air 32 pp. 146 118/2.
 - g. Air 28 pp. 112 330/50.
 - h. Air 29 pp. 124 330/51.
 - i. Air 21 pp. 82 153/13.
 - j. Air 29 pp. 116 305/21.
 - k. Air 2 pp. 25 357/92.
 - l. Air 18 pp. 74 357/96.
11. It is considered that these changes are consistent with the Regional Council's approach to the management of the effects of discharges to air and will provide more clarity and certainty for decision-makers and resource users.
12. These recommendations have been included in the most recent 'green' versions of the track changes for Chapters 8 and 14.

GLOSSARY REFERENCES

13. The Hearings Panel has requested that defined terms in the One Plan be italicised and referenced with a ...^... if an RMA definition and a ...*... if a Glossary definition. These references have been made in the most recent 'green' versions of the track changes for the chapters covered in this report.

CORRECTIONS TO ORIGINAL OFFICER'S REPORT

14. Some of the submissions in the original officer's report did not have a recommendation as to whether they should be accepted, accepted in part or rejected. To correct this omission I have included them, with the appropriate recommendation, in Appendix 1.

EVIDENCE FROM OPUS CONSULTANTS FOR AIRWAYS CORPORATION OF NZ

15. Airways generally supports the changes proposed to Chapter 14. However, they have one residual concern regarding high velocity vertical discharges from large-scale combustion and industrial processes creating turbulence and adversely affecting the safety of aircraft at airports. Airways seeks changes to Rule 14-12 *Miscellaneous discharges into air from industrial or trade premises* and an addition to Policy 14-2 to recognise the potential for adverse effects from high velocity vertical discharges on aircraft operations. I understand that Opus, as agent for Airways, has undertaken research on this topic and this is noted in the evidence of Ms Hooker. I have a good understanding of the operations of Palmerston North Airport having assisted the operators on various planning matters over the last few years. I am now more clearly apprised of the issue and agree that Rule 14-12 and Policy 4-2 should

be altered to provide more certainty around discharges that might adversely affect airport operations. I recommend the following wording changes:

Recommended changes to Air 38 pp. 170 36/14. (Recommendation Air 38A). Add the following performance standard to Rule 14-12 Miscellaneous discharges into air from industrial or trade premises:

(e) *The vertical velocity of the discharge[^] does not exceed 4.3 metres per second, at 60 metres above ground level and/or does not penetrate the obstacle limitation surface of an aerodrome.*

Recommended changes to Air 21 pp. 80 36/15. (Recommendation Air 21A). Add the following to Policy 14-2 Consent Decision-making for other Discharges[^] into Air:

(h) *adverse effects on aircraft safety from high velocity vertical discharges[^] of air.*

EVIDENCE FROM OPUS CONSULTANTS FOR THE DEPARTMENT OF CORRECTIONS

16. The Department of Corrections does not want to be listed within *Permitted Activity[^] Rule[^] 14-4 Small-scale fuel burning* in relation to the additional clause I had recommended which states:

“...and disposal of green vegetative matter undertaken by New Zealand Police or the Department of Corrections.”

17. I had made the recommended change as I had understood that the Department of Corrections, like NZ Police, was required to undertake burning of plants on occasion within small-scale fuel burning equipment. The evidence of Ms Hooker considers that Rule 14-5, which relates to Open Burning, will be adequate to meet the needs of the Department of Corrections in relation to the burning of vegetative matter. Therefore I make the following recommendation:

Recommended changes to Air 31 pp. 132 20/4. (Recommendation Air 31A). Delete the following words within the Activity Column of Rule 14-4 Small-scale Fuel Burning:

“...or the Department of Corrections.”

18. I note that Opus Consultants on behalf of NZ Police supports the inclusion of NZ Police within the amended wording for Rule 14-4. This support is noted.

EVIDENCE FROM TONKIN & TAYLOR FOR THE NEW ZEALAND DEFENCE FORCE

19. Tonkin & Taylor raises the following matters in relation to Chapter 14 Discharges to Air:

(a) Seeking the inclusion of an exception to Rule 14-1 *Small-scale Application of Agrichemicals** and Rule 14-2 *Widespread Application of Agrichemicals** to be worded as follows (the words sought are underlined):

There shall be no discharge within any rare habitat, threatened habitat* or at-risk habitat*, except for the purposes of pest control, or for the purpose of protecting, maintaining or enhancing any rare habitat*, threatened habitat* or at-risk habitat*.*

Having read the evidence of Ms Grace, I understand the issue for NZ Defence is that it undertakes spraying over tussock grasslands at Waiouru in order to maintain tussock cover for training purposes. In undertaking the spraying NZ Defence is also maintaining the tussock grassland habitat. Tussock grassland is identified as being within the No Threat Category in Table E.1 in Schedule E. I understand that NZ Defence sprays heather, pinus contorta and also regenerating native species.

The areas of tussock are not rare or threatened habitats and will only be an at-risk habitat where it is within 20 metres of a site of significance-aquatic or contains threatened plant or animal species. On the whole then, the performance standard is not likely to be triggered.

I understand that the Officer's reports on the Land-based Biodiversity Rules (ie., Rule 12-7 relating to rare habitats*, threatened habitats* or at-risk habitats*) suggest the following exclusion that would make such spraying a permitted activity:

The discharge of agrichemicals for the purposes of controlling pests as defined in a Regional Pest Management Strategy prepared under the Biosecurity Act 1993.*

The inclusion of such a provision within Rule 14-2 would provide for consistency between the *rules*^ and would allow for the spraying of heather and pinus contorta within a rare, and threatened habitat or at-risk habitat. It would not, however, provide for the spraying of regenerating native vegetation, which appears to be sought by NZ Defence. The spraying of native vegetation is not supported and the importance of this vegetation has been reported to the Hearings Panel in relation to Chapter 5 (Land).

I consider that the wording sought by NZ Defence would potentially open up spraying to any party who could then as a defence argue they were endeavouring to protect or maintain the habitat. I had considered whether I could include a specific exclusion which would allow for such spraying by NZ Defence. However, this approach would not deal with the matter of needing to protect native vegetation within the identified habitats, and there may be other organisations eg. Department of Conservation (DOC) where the same exclusion could apply. Therefore listing NZ Defence would lead to inconsistency.

If the Hearings Panel considers that the addition of the provision outlined above and as recommended for Rule 12-7 is within the scope of the submissions then in terms of consistency and providing for more clarity within Rules 14-1 and 14-2, a similar provision could be added to these rules.

- (b) Amendments to the additional standard within *Permitted Activity*^ Rule 14-5 to take out the word 'any' and replace it with the word 'significant' as follows:

(d) The discharge^ shall not cause ~~any~~ significant reduction in visibility on any designated commercial or military flight path.

I understand NZ Defence considers the wording of the *Permitted Activity*^ standard is too absolute and even the merest wisp of smoke would breach the *rule*^. I understand the point being made by NZ Defence as the word any

would potentially apply to the “merest wisp of smoke”. However, I consider the inclusion of the word ‘significant’ within the wording of a Permitted Activity standard does not give any certainty as there would be questions over the word significant and what it means. I consider it would be extremely difficult to define the word significant. As an alternative, I suggest that the wording be changed by replacing the word ‘any’ with the word ‘a’ so that the standard will state the discharge shall not cause a reduction in visibility. This will provide for some common sense to then prevail in the interpretation of the Rule. If the change is made to Rule 14-5 it should also apply to Rule 14-4, which uses the same terminology.

- (c) NZ Defence seek to have an additional sub clause added to the definition of Fire-training within the Glossary as follows:

(d) The New Zealand Defence Force Fire Service (or under the authority of), including the School of Military Engineering.

I accept that there is the potential for the definition not to include the Defence Force Fire Service and I accept that the inclusion of the sub clause is sensible and provides certainty.

20. Based on the above assessment I make the following recommendations:

Recommended changes to Air 31 pp. 132 36/12. (Recommendation Air 31A). Amend Rule 14-4 Small-scale Fuel Burning.

Recommended changes to Air 32 pp. 146 36/13. (Recommendation Air 32A). Rule 14-5 Open Burning as follows (words to be deleted are struck through and new wording is underlined):

(i),(d) The discharge[^] shall not cause a ~~any~~ reduction in visibility on any designated commercial or military flight path.

Recommended changes to Air 32 pp. 146 118/2. (Recommendation Air 32A). Amend the definition for Fire Training within the Glossary by adding the following sub clause:

(d) The New Zealand Defence Force Fire Service (or under the authority of), including the School of Military Engineering.

Recommended changes to Air 28 pp. 112 330/50. (Recommendation Air 28A). Consider adding the following to Rule 14-1 (d) Small-scale Application of Agrichemicals.

Recommended changes to Air 29 pp. 124 330/51. (Recommendation Air 29A). Consider adding the following to Rule 14-2 (b) Widespread Application of Agrichemicals:

...except for the purposes of pest control as defined in a Regional Pest Management Strategy prepared under the Biosecurity Act 1993.

EVIDENCE FROM TONKIN & TAYLOR FOR THE HIGGINS GROUP

21. Tonkin and Taylor on behalf of the Higgins Group seeks that fixed asphalt plants be treated in the same way as mobile asphalt plants. In my original report to the

Hearings Panel I recommend that mobile asphalt plants be listed as a Permitted Activity and that specific performance conditions be added to manage the actual and potential effects from these plants. I consider it appropriate to treat what is essentially the same activity in the same manner, rather than automatically requiring a resource consent for a Discretionary Activity. I recommend the following changes:

Amend the Rule Guide on page 14-19 of the One Plan by:

Deleting an Activity as follows:

(ii) asphalt plants.

**Recommended changes to Air 21 pp. 82 153/13. (Recommendation Air 21A).
Altering Rule 14-12 Miscellaneous Discharges Into Air from Industrial or Trade Premises as follows:**

Add an additional Activity as follows:

(v) Fixed asphalt plants.

Add the following standards:

- (f) The discharge^e of dust from the source at any site^a where minerals or aggregates are dried or heated or prepared for the manufacture of hot mix asphalt does not exceed 5kg/hr.*
- (g) Fixed asphalt plants are equipped with temperature sensors and aggregate proximity sensors that limit and control operating temperatures within the drum.*
- (h) Air pollutions control equipment for fixed asphalt plants is designed to achieve a particulate matter concentration of not more than 250 milligrams per cubic metre (NTP).*

DISCUSSIONS WITH SALLY STRANG OF HANCOCK FOREST MANAGEMENT NZ LTD

22. Sally Strang is the Environmental Manager with Hancock Forest Management NZ Ltd. Ms Strang is also representing P F Olsen Ltd, Ernslaw One Ltd and NZ Forest Managers Ltd. The concerns raised by Ms Strang relate to the wording within Rule 14-2 for the widespread application of agrichemicals. Ms Strang considers that the rule as worded means a resource consent application will be required, eg., when aerially applying agrichemicals. Ms Strang considers Council staff will have little experience in aerial spraying when considering a resource consent application and that the standards are arbitrary and onerous. It is unclear in practice how often such a consent application would be required.
23. In my original report I recommended Rule 14-2 remain as currently worded and I acknowledged that any setback is arbitrary by its nature. The Rule seeks to avoid potential and actual adverse effects of agrichemical spray drift into water and onto *rare habitats**, *threatened habitats** and *at-risk habitats**. I accept that the management of the spraying technique is likely to have a more direct impact on the avoidance of spray drift. Therefore, I recommend that the rule be amended to reduce the buffer distances in conjunction with clarifying the techniques that should be employed when applying agrichemicals aerially, to constitute reasonable measures.
24. Rule 14-2 relates to a Permitted Activity and needs to apply to all potential users, not just forestry companies. With this in mind I considered whether a possible exception clause could be added to the rule to state that where a person holds Forestry

Stewardship Council accreditation that they could be exempt from the rule. I consider that this unfairly singles out the forestry companies and I would then need to also consider whether other exemptions would need to be made e.g. a person holding a GROWSAFE™ certificate. In the time available between discussing this matter with the forestry companies and completing this report, I have not been able to adequately assess whether the accreditation process would provide enough protection to water and habitats. This is a matter I would invite the submitters to comment on further at the Hearing and I can give further consideration to this matter. However, do consider that the changes I recommend allow for the rule to be fairly applied and the reduction in the buffer areas should reduce the potential for a need to apply for resource consent. I consider this approach should meet the concerns of the submitters.

Recommended changes to Air 29 pp. 116 305/21. (Recommendation Air 29A). Amend Rule 14-2 Widespread Application of Agrichemicals Standard (i) as follows (new wording is underlined):

- (i) *For aerial discharges[^] all reasonable measures shall be taken to prevent any discharge[^] of agrichemicals*:*
- (i) *within ~~20~~ 10 m of any continually flowing river[^] which has a bed[^] width of 3 m or more, or any lake or wetland[^] which has an area of 1 ha or more.*
- (ii) *within ~~50~~ 15 m of any rare habitat*, threatened habitat* or at-risk habitat*.*

Under this clause, “reasonable measures” include the use of GPS technology, positive airflow indicators on boundaries and direct boundary supervision by qualified personnel where required.

25. I understand the Hearings Panel has received evidence and may be considering changes to the provisions relating to forestry generally and to definitions of relevant water bodies in particular. These changes may be relevant to considering this Rule and I would be happy to provide comment to ensure consistency or alternative recommendations after the panel’s preliminary decisions are made available.

DISCUSSIONS WITH HORTICULTURE NEW ZEALAND

26. A few days prior to finalising this report I was able to meet with Lynette Wharfe and Chris Keenan of Horticulture NZ along with three local Horowhenua growers. The meeting was productive with a number of matters being discussed. The key issues for Horticulture NZ involve:

- (d) The GROWSAFE™ certification programme for growers and having reference to the correct certificate within the rule structure of the Plan. Also raised was the ability to rely on GROWSAFE™ rather than having arbitrary buffer distances, eg., when discharging within 20 metres of a continually flowing river.

The current wording in the Air Chapters refers to GROWSAFE™ certification generally. I understand there are different certificates for different levels and skill sets. I can see merit in referring to the correct level of certification within the rules. However, with the limited time available however, I have not been able to undertake an appropriate assessment and this is a matter I would ask the submitter to raise at the Hearing so I can then provide further comment.

As outlined above in paragraph 23, I am recommending the relaxing of the buffer distances for the widespread application of agrichemicals. I consider the alterations to the buffer areas will be helpful to horticultural enterprises.

- (e) Ability to enforce the provisions of the Plan, specifically the references to the mandatory requirements of NZS 8409:2004 Management of Agrichemicals within the Plan.

Horticulture NZ wants to ensure that the mandatory provisions with the NZS 8409:2004 are adequate in relation to the rule and the effects being controlled. Again, this is a matter I want to consider carefully and I ask the submitter to raise it at the Hearing.

- (f) Deletion of reference to 'nuisance effects' within the introduction to Chapter 8 and increased specificity around what these effects are.

I agree that the term 'nuisance effects' is broad and therefore where the term is used in section 8.1, I recommend it either be deleted or replaced with more direct terminology.

- (g) Mechanisms for giving effect to Policy 8-4 *Incompatible Land Uses* and providing guidance to territorial authorities to ensure that consideration is given in the preparation of district plans to the issue of incompatible land uses and reverse sensitivity effects.

I consider there is enough scope within Method 8-4 for the Regional Council to provide guidance to territorial authorities in relation to the implementation of Policy 8-4.

27. The following changes are recommended:

Recommended changes to Air 2 pp. 25 357/92. (Recommendation Air 2A). Amend Section 8.1 Scope and Background (third paragraph) as follows (new words are underlined and text to be deleted is struck through):

~~Nuisances caused by Oedours, smoke and dust have dominated complaints received by the Regional Council for some time, making up more than half of the complaints received between 2000 and 2004. potential for adverse health and nuisance~~
noxious, dangerous, offensive and objectionable effects and as a consequence the number of complaints.

Recommended changes to Air 18 pp. 74 357/96. (Recommendation Air 18A). Amend Method 8-5 Public Information – Air Quality as follows (new words are underlined and text to be deleted is struck through):

Project Name Method 8-5	Public Information – Air Quality
Who	The Regional Council shall work with territorial authorities, health boards and other relevant agencies <u>organisations</u> .



Clare Barton
 Senior Consultant Planner
 21 May 2009

Introductory Statement and Supplementary Recommendations – Air – Proposed One Plan

APPENDIX 1: CORRECTIONS TO ORIGINAL OFFICER'S REPORT

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Submitter	Number	Point	Decision Sought	Recommendation
Ministry of Social Development	263	1	<p>Although the ministry supports the overall provision in relation to the reduction of fine particle (PM10) levels in the communities as identified, we would seek to be involved in the development of any long-term strategies and to work with you to raise awareness of air quality issues and potential solutions with those who are most likely to be affected but least likely to be able to cope with associated financial and social costs.</p> <p>To this end the Ministry would like to be considered as one of the parties included in 8.5 Methods as follows:</p> <p>Project Name Improving Air Quality (PM10) - Awareness Programme: Ohakune, Feilding, Dannevirke, Pahiatua and other degrade areas</p> <p>Who - Regional Council, Ministry for the Environment, Ministry of Social Development, Energy Efficiency Conservation Authority, Health Boards, Territorial Authorities, Industry and the community.</p>	<u>Accept</u>

Page Omitted from report

Submitter	Number	Point	Decision Sought	Recommendation
New Zealand Defence Force	330	49	<p>Decision requested refers to Rules 14.1 (d) and 14.2 (b) as follows:</p> <p>Amend rules 14.1 Condition (d) and Rule 14.2 Condition (b) to read:</p> <p>There shall be no discharge within any rare or threatened habitat* or at-risk habitat*, except for the purposes of pest control, or for the</p>	<u>Accept in part</u>

Submitter	Number	Point	Decision Sought	Recommendation
			purpose of protecting, maintaining or enhancing any rare or threatened habitat* or at-risk habitat*.	

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Submitter	Number	Point	Decision Sought	Recommendation
Horticulture New Zealand	357	167	Amend Policy 8-2 and Table 8-3 to refer to localised air quality Cross reference to the Chapter 14 Page 3 for explanations for noxious, dangerous offensive, or objectionable.	<u>Accept in part</u>

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Submitter	Number	Point	Decision Sought	Recommendation
Trust Power Limited	511	365	Further submission to 426/113	<u>Accept</u>